IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 535/2006
(Jaswant Singh Rathore V/s State of Rajasthan)

Date of Order : 22/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sachin Acharya, for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

Issue notice for final disposal. Learned public prosecutor is directed to accept notice. He accepts the notice. With the consent of learned counsel for the parties, the petition is heard and decided at the admission stage.

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 01.03.2006 passed by learned Sessions Judge,Udaipur (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 09.11.2005 passed by Chief Judicial Magistrate, Udaipur (for short 'the trial court' hereinafter), was partly allowed. The revisional Court while partly allowing the revision petition maintained the order passed

by the trial court dated 9.11.2005 to the extent of payment of compensation of Rs.100/-.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the courts below.

On a first information report lodged for the offences under Sections 406 and 420 IPC, the petitioner who is investigating officer and at the relevant time was posted as S.H.O. Police Station, Surajpole, arrested the person named as accused in the FIR. However, after investigation, certain documents were filed by the parties, on the basis of which, it was revealed that the transaction is of a civil nature as the vehicle in question was purchased on hire purchase basis and police filed a negative final report and sought release of accused under Section 169 Cr.P.C.

The trial court accepted the negative final report, however, held that since the police ultimately after investigation did not find a case against the accused person named in the FIR and he was arrested and detained for a period of one day, for which a compensation is to be paid amounting to Rs.100/-. In my view, the offence which was registered with the police on a first information report lodged by the complainant was non-

bailable offence and in non-bailable offence, if the matter is reported to the police, then in order to investigate the matter, if the police has arrested the accused named in the FIR, it cannot be said that the police has exceeded the power conferred under the Code of Criminal Procedure to investigate the matter. In the circumstances, therefore, the order passed by the trial court as well as by the revisional court deserve to be set aside.

In the result, the petition is allowed. The order dated 09.11.2005 passed by Chief Judicial Magistrate, Udaipur, and the order dated 01.3.2006 passed by the revisional court partly confirming the order dated 09.11.2005 are set aside.

(H.R.PANWAR),J.

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